of the 31st of March, 1939, by special leave of the Court of Appeal, and he did not get it. Even if we could overlook the failure to serve the Notice of Motion of the 10th of May, 1939, on the Official Assignee and the Petitioning Creditor—which I do not think that we can do, and then, having done so much for the applicant, could do even more by treating it as a motion in the Court of Appeal and before a single Judge of that Court, yet our efforts would avail him not at all because a single Judge of the Court of Appeal has no jurisdiction to make an order extending the time within which an appeal to that Court must be lodged.

So it was laid down and decided in *S. Muthucumaru v. Alkaff & Co.*,[3] and since S. 27 of the present Courts Ordinance exactly reproduces S. 1150 of the Civil Procedure Code which formerly applied to the Supreme Court of the Straits Settlements, that decision is still good law to-day. It may also be cited as an authority in support of the view, if any authority apart from the Rules of the Supreme Court 1934 is needed, that a notice of motion for special leave to appeal out of time must be served on the respondent or respondents, who are entitled to be heard in opposition thereto. In this matter any motion for special leave to appeal out of time to the Court of Appeal should have been served on the Official Assignee and the Petitioning Creditor, so that one or both of them could have been heard in opposition thereto if he or they so desired to be heard; and the failure to serve notice of appeal on the Petitioning Creditor is a plain contravention of the provisions of O. 55 r. 2(3) of the Rules of the Supreme Court 1934.

These mistakes in procedure are not only unfortunate but also substantial, and have prevented us from receiving the assistance which the Petitioning Creditor might otherwise have given us. They have also operated to deny the Petitioning Creditor his right to be heard, both on the application for an extension of time and at the hearing of the appeal; and we cannot possibly overlook mistakes in procedure which may have worked an injustice. I have been puzzled to account for them, and it may be that the *ex parte* application for an extension of time was due to a misunderstanding of the provisions of O. 55 r. (1) of the Rules of the Supreme Court 1934. It seems perfectly clear, however, that that rule only applies to cases where there is no right of appeal such as, for example decisions of the High Court under S. 36 of the Estate Duty Ordinance, and not to cases which are appealable by virtue of express statutory provisions. As to the failure to serve notice of appeal on the Petitioning Creditor, I can only suppose that the plain provisions of O. 55 r. 2(3) were disregarded *per incuriam*.

For all these reasons, which I have elaborated at some length, I am of the opinion that the intended appeal of V. S. Madar against the order of the 31st of March, 1939, is not properly before us, and that we cannot, at this stage, overlook or cure the various defects in the steps taken to bring it before us. The result is that it must be dismissed, but as the learned Assistant Official Assignee failed to draw our attention to any one of the defects in procedure on which this Judgment is based, I do not think that there should be any order as to costs.

*Appeal dismissed.*

---

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

November 1, 1940.

## KATHIRAYSAN RAJA GOPAL

v.

## AHNA SEENA SUPAYA THEVAR & ANOR.

[SINGAPORE IN FORMA PAUPERIS SUIT No. 219 of 1940]

*Judgment in favour of beneficiary against administrator for money unaccounted for—Subsequent claim by beneficiary against sureties to administration bond —Whether judgment against administrator binding upon sureties.*

The plaintiff, a beneficiary in the estate of a deceased person, commenced administration proceedings against the administrator. In such proceedings certain accounts and enquiries were ordered to be taken and made and they were in fact taken and made, one result being that the Registrar certified that a sum of $6,031.20 had not been accounted for by the administrator. The plaintiff then claimed against the sureties to the administration bond the sum of $7,500.00 being the gross amount of the bond. At the trial it was however admitted that he could only recover the actual loss which the estate had suffered.

**Held,** that the judgment in the suit between the beneficiary and the administrator was not binding upon the sureties who were not parties to the proceedings and must be regarded as **res inter alios acta.** The amount of the debt or liability must, if the sureties insisted upon it, be proved against them just as it had to be proved if the action were against the principal.

Case referred to:—

(1) *Young, Ex parte: In re Kitchin,* 17 Ch. Div. 668, 674.

TRIAL OF ACTION.

*R.D.W. Edwardes-Ker* for plaintiff.

*Philip Hoalim* for defendants.

The facts and arguments sufficiently appear from the judgment.

*Cur. adv. vult.*

**Terrell, Ag. C.J.** The plaintiff in this action is one of the beneficiaries in the estate of T. M. Kathiraysan Thevar deceased, and is the assignee under s. 30 of the Probate and Administration Ordinance of a bond entered into by Kathirvaloo Thevar and the two defendants for the due administration of the estate of the deceased by Kathirvaloo Thevar the administrator.

The plaintiff commenced proceedings against the administrator in November, 1938, (Suit No. 490 of 1938) and on the 10th February, 1939, an order was made that certain accounts and enquiries be taken and made. As a result thereof the Supreme Court on the 24th January, 1940, certified that a sum of $6,031-20 had been unaccounted for by the administrator. In the month of March, 1940, the administrator died.

The plaintiff claims the sum of $7,500, the gross amount of the bond, but it is admitted that he can only recover the actual loss which the estate has suffered.

The only question that arises is whether the accounts which were taken in Suit No. 490 of 1938 are binding on the defendants.

The condition of the bond is that the obligation is void if the administrator "do well and truly administer according to law the movable and immovable property of the deceased etc." There is no provision that any admission by, or judgment against, the principal shall be conclusive against the surety, and accordingly the ordinary rules governing principal and surety apply. The judgment in Suit No. 490 of 1938 must therefore be regarded as *res inter alios acta* (see *Hailsham* Vol. XVI p. 58). As Lush L.J. said in *Ex parte Young, In re Kitchin,*[1] you must find explicit words to make a person liable to pay any amount which may be awarded against a third person, whether it be by a jury, or a Judge, or an arbitrator. What the guarantor engages for is to be answerable for any debt that they may owe for wines, or for any damages which may be sustained by the breach of any other of the provisions of the agreement. Then the amount of the debt in the one case, and the amount of the damages in the other, must, if the surety insists upon it, be proved against him, just as it would have to be proved if the action were against the principal".

The Precedent books contain forms of guarantee in which the surety expressly agrees to accept a statement of account or certificate to which the surety himself is not a party, (*see* for instance the policy of guarantee given by an Insurance Company guaranteeing the fidelity of an officer of Guardians of the Poor in Butterworth's Encyclopaedia of Forms and Precedents, Vol. 6 at p. 229). Guarantees to bankers usually contain similar provisions. But when there is no special provision the surety cannot be held to have waived his rights.

There will accordingly be an order that the accounts of the administrator be taken again before the Registrar. I see no reason why the accounts should not be taken by the same Registrar. The further consideration of the action will be adjourned.

*Order for retaking of accounts.*

Solicitor for plaintiff—*R. W. D. Edwardes-Ker.*
Solicitors for defendants—*Philip Hoalim & Co.*

---

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, Ag. C.J.
October 3, 1940.

## LEONG AH KOW v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 85 of 1940]

*Common gaming house—Game of darts—Whether game of chance or skill—Money or money's worth—What amounts to money's worth—Common Gaming Houses Ordinance (Cap. 30) s. 4(c).*

A game of darts has been played in Singapore amusement parks. The dart board is circular and is divided into divisions separately coloured or separately numbered. The player stakes a counter upon the colour or number which he intends to hit. The dart board is spun on its axis and the player throws the dart while the board is in motion. If the dart pierces the colour or number on which the player stakes he receives a tin of cigarettes; if not, of course, he loses his stake.

**Held,** that in the circumstances of this case the game is a game of chance and that if the owner of the dart board stakes his tin of cigarettes against the price of the counter of the player the game is played for money or money's worth.

Cases referred to:—

(1) *Dyson v. Mason,* 22 Q.B.Div. 351.

(2) *The King v. Chapman,* [1931] 2 K.B. 606.

(3) *Luff v. Leaper,* 36 J.P. 773.

MAGISTRATE'S APPEAL.

*T. W. Ong* for appellant.

*C. H. Butterfield* (Crown Counsel) for the Crown.

The appellant was charged before the Magistrate on a charge under s. 4(c) of the Common Gaming Houses Ordinance (Cap. 30) and he was acquitted by the Magistrate. The Crown appealed against the acquittal and the appellant was ordered to be